

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Abilene, Texas

**BIMBO BAKERIES, USA, INC.**<sup>1</sup>

Employer

**and**

Case No. 16-RC-10643

**GENERAL DRIVERS, WAREHOUSEMEN,  
AND HELPERS LOCAL UNION 745**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

**I. The Petition, Issues Presented, and Parties' Positions**

The Petitioner seeks to represent all warehouse (or shipping) and transport drivers at the Employer's 2701 Palm Street, Abilene, Texas facility (herein bread plant) and to exclude all salespeople, office clerical, managers, watchmen, guards, and supervisors as defined in the Act. The Employer contends that the petitioned-for unit is inappropriate and that all employees employed at the Employer's North Treadway, Abilene, Texas facility (herein pie plant) should be included in any unit found appropriate. Additionally, the Employer contends that a wall-to-wall unit, consisting of all shipping, transport, maintenance, production, sanitation, and garage employees, is the only appropriate unit.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

The issues at hand are: (1) whether the scope of the unit should include employees employed at the Employer's pie plant; and (2) whether the petitioned-for unit should also include maintenance, production, sanitation, and garage employees.

Both parties stipulate that the Petitioner has made demands upon the Employer for recognition, the Employer has refused such recognition, and floor leaders should be included in any unit found appropriate. Neither party contends that a contract bar to an election exists. The Petitioner withheld its position as to whether it would proceed to an election in a unit larger than or different from the petitioned-for unit.

## **II. History of Collective Bargaining**

The record reflects that it is the Employer's understanding that in the 1970s, the Bakery and Confectionary Workers, International Union of America, AFL-CIO, Local 111 was certified as the bargaining representative for a particular group of employees. In taking administrative notice, I note that on August 29, 1977, in Case No. 16-RC-7525, the Bakery and Confectionary Workers, International Union of America, AFL-CIO, Local 111 was certified as the representative of a unit that included all production and maintenance employees, shipping and receiving employees, garage employees, sanitation employees, and transport drivers at 2701 Palm and all thrift-store employees in Abilene and excluded all office clerical employees, route salesmen, guards, and supervisors as defined in the Act. Employees at the pie plant were not included in the unit. The record reflects that some bargaining occurred but that no contract was reached. Further, neither party raised the prior collective bargaining relationship as an issue or conflict with respect to the instant petition.

### **III. The Regional Director's Findings**

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. For the reasons set forth below, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit and that the Employer has failed to rebut the single-facility presumption. Accordingly, I will direct an election in a unit consisting of approximately 45 employees.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the background evidence. Finally, I will relate the reasoning that supports my findings.

### **IV. Overview of Employer's Operations and Supervisory Structure**

The Employer is engaged in the production of bread and cake products. The two facilities at issue in the instant case, the bread plant and the pie plant, are located in Abilene, Texas, however the Employer also has other facilities located throughout the state of Texas. Further, the Employer has a corporate office in Fort Worth, Texas that houses labor relations and human resources. The Employer's products are produced at the bread and pie plants, which are located approximately four to five miles apart. Following production, the products are then packaged and shipped to customers as well as to the Employer's other facilities in Texas.

Clarke Flowers is the plant manager and is responsible for both the bread and pie plants. The Employer employs five department heads who report to Flowers. The department heads include: Production Superintendent Ken Mills (bread plant), Production Superintendent Jerry Hubbard (pie plant), Distribution Manager Gary Runnels, Plant Engineer Richard Bennett, and

Sanitation Superintendent Cos Sandoval. Flowers and the five department heads possess the authority to hire and fire employees.

Margie Stevens, Bill Gibson, Felipe Herrera, Jim Williams, and Jeff Hubbard, all production supervisors, report to Mills at the bread plant. David Olmos, production supervisor, reports to Hubbard at the pie plant. Production supervisors possess the authority to discipline employees. Production floor leaders at the bread and pie plants report to their respective production supervisors or to either Mills or Hubbard. The Employer employs three production floor leaders at the bread plant and one production floor leader at the pie plant.

Runnels is responsible for shipping, transport, and vehicle maintenance. Liz Server, shipping supervisor, and Dennis Rozman, transport/garage supervisor, report to Runnels. The record reflects that Sever and Rozman can counsel employees regarding attendance problems but does not reflect what that counseling entails. Nonetheless, neither party disputes that Server and Rozman are 2(11) supervisors. The Employer employs three shipping floor leaders.

Bennett is responsible for the maintenance department at the bread and pie plants. Approximately eighteen hourly employees, including mechanics and floor leaders, report to Bennett.

Sandoval is only responsible for sanitation at the bread plant, as Jerry Hubbard's pie plant duties also encompass sanitation.

As stated above, the parties stipulate that floor leaders should be included in any unit found appropriate.

## **V. Background**

### **A. Facilities**

The bread plant has two production lines and produces, for example, white bread, wheat variety breads, and several varieties of hamburger and hot dog buns. At the bread plant, the Employer employs approximately 21 shipping employees, 24 transport employees, 12 maintenance employees, 94 production employees, 13 sanitation employees, and one garage employee. Generally, the bread plant is divided into two areas: the production area and the warehouse area/shipping dock. A wall, featuring a doorway with plastic strips, separates the two work areas. The bread plant also houses administrative offices and a garage.

At the pie plant, the Employer employs approximately 2 maintenance employees and 17 production employees. Production at the pie plant is unique. For example, production is limited to pies. Additionally, employees at this facility also perform some sanitation and shipping duties, and the maintenance department at the bread plant supports the pie plant. One of the transport employees from the bread plant is dedicated to making regular trips - approximately twelve per week - from the bread plant to the pie plant. Upon arrival at the pie plant, this employee will unload baskets necessary for the next day's production, load pies onto the trailer, and then return to the bread plant. The pies are unloaded at the bread plant and prepared for shipping.

### **B. Employees**

Shipping employees, who report to the supervisors in their department, are primarily responsible for loading and unloading product, filling the orders by warehouse or by inter-plant, staging orders, and reviewing the work. They may use a forklift and pallet jack, which they share with the sanitation employees, in completing their tasks. Three shipping employees are on

a four-day work week, and the remainder are on a five-day work week. On occasion, a shipping employee may assist in the production department. For example, approximately one shipping floor leader in the last four years assisted in the production department on the bun line. Shipping employees work in the warehouse area/shipping dock and earn between \$11.05 and \$14.25 per hour.

Transport employees make inter-plant runs to the Employer's other facilities throughout Texas, runs to customer warehouses throughout Texas, runs to the pie plant, and help load and unload product. Transport employees bid on the available runs and work either a five-day or four-day work week. In order to become a transport employee, one must possess a commercial driver's license and pass a Department of Transportation physical. Transport employees are also subject to DOT mandated random drug testing. When transport employees are involved in accidents, they are subject to discipline and must fill out the appropriate paperwork. Transport employees are in the same department under the same department head as shipping employees, use lockers, work out of the warehouse area/shipping dock, and earn between \$13.85 and \$14.75 per hour.

Maintenance employees are generally responsible for keeping both facilities in proper working order. The record does not reflect that they have one assigned working area. They are supervised within the maintenance department, work five-day work weeks, and earn between \$11.40 and \$17.55 per hour.

Production employees are responsible for producing breads, buns, cakes, and pies. They have their own work area at the bread plant (although one of the bun line machines is constructed in such a manner that it extends into shipping and forces several production employees on that line to work in the warehouse area/shipping dock) and report to the supervisors and leads

assigned to their department. Depending on their assigned line, production employees work a four-day or a five-day work week. After the product is produced, certain production employees load the product onto a dolly and wheel the dolly towards shipping, where it is then checked by a product counter. Production employees must learn the skills necessary to operate their machines. They are required to wear a plastic hat while working and sometimes use a pallet jack in the course of their work. They earn between \$11.70 and \$17.55 per hour. The record reflects that the oven operator helps shipping employees break down baskets and that production employees may infrequently assist in shipping or sanitation when production demands are down.

Sanitation employees are responsible for the detailed cleaning of the facilities. The record does not reflect that they have one assigned working area. As noted above, sanitation employees share a forklift and pallet jack with shipping employees. They have separate supervision from shipping, transport, garage, and maintenance employees, work five-day work weeks, and earn between \$11.70 and \$15.65 per hour.

The garage employee works in the garage and is responsible for vehicle maintenance. He is in the same department as shipping and transport and reports to the same department head. The garage employee works a five-day week and earns approximately \$13.40 per hour.

Employees at their respective facilities have somewhat frequent but incidental contact with one another. Shipping and transport employees, however, have the most frequent and substantial contact with one another as they work out of the same area and often work side-by-side loading and unloading product. Regarding transfers, the record reflects that during the last two years approximately eleven employees out of two hundred employees have transferred departments. The record also reflects that at least two of the transfers were involuntary, one due to a reduction in force and the other to an injury. No employees have permanently transferred

between the bread and pie plants in at least four years. No evidence was offered of any temporary transfers between the two facilities during the same time frame.

At the bread plant, all employees use the same break room, locker rooms, time clock, and general parking area. The pie plant, too, utilizes one time clock for all of its employees. All employees attend departmental meetings, work approximately forty hours per week, must possess a high school diploma (or its equivalent), and are paid on a weekly basis. Additionally, employees are required to wear uniforms, but the colors of the uniforms vary between the departments. Finally, employees are subject to the same employee manual, produced and controlled by the Fort Worth corporate office. The manual speaks to the various classifications of employees. For example, as discussed above, different classifications are permitted different work schedules. However, some sections of the manual, such as employee benefits (including health plans, life insurance, disability, and retirement plans), apply across the board.

## **VI. Analysis**

### **A. Single Facility vs. Multi-Facility**

In the instant case, the Employer argues that pie plant employees should be included with bread plant employees in any unit found appropriate.

The Board has long held a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit may be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Bowie Hall Trucking*, at 41. In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of employee skills, functions, and working



conditions; degree of employee interchange; geographic separation; and bargaining history if any exists. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993).

I find the Employer has failed to present sufficient evidence to rebut the presumptive appropriateness of the Employer's bread plant as a single-facility unit.

The Employer's operation and labor relations are centrally controlled out of its corporate office in Fort Worth. The Board, however, has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989 fn. 6 (1993). Moreover, the burden is on the Employer to overcome the single-facility presumption by a showing of an absence of local autonomy. See *J&L Plate*, 310 NLRB 429 (1993); *Red Lobster*, 300 NLRB 908 (1990). Here, although corporate dictates the Employer's policies, management at the individual facilities retains control over the day-to-day operations and supervision of its employees. For example, department heads at the bread and pie plants possess the authority to hire and fire employees.

The Employer's primary argument is that employees at both the bread and pie plants share similar working conditions, functions, and skills. For example, employees at both facilities are subject to the same employee manual, perform production work, and strive to help the Employer meet its customer needs. However, employees at the two facilities produce different products, and the pie plant does not employ any employees dedicated solely to shipping, transport, sanitation, and vehicle maintenance.

Despite some similarities between the bread and pie plants, an absence of evidence of contact among employees of different facilities and a showing that individual plants perform different functions supports a conclusion that a single-facility unit is appropriate. *J&L Plate*, 310 NLRB 429 (1993). Here, other than the transport runs from the bread plant to the pie plant, the Employer offered little, if any, evidence of regular contact between the two facilities. Further, each facility performs a different function: the bread plant is responsible for producing bread-related products and the pie plant for pie-related products.

Among the factors considered in determining whether the single facility presumption has been rebutted, the Board views the absence of employee interchange as a critical factor. *First Security Services Corp.*, 329 NLRB 235 (1999). Here, no employees have permanently or temporarily transferred between the bread and pie plants in at least four years.

The bread and pie plants are located approximately four to five miles from one another. Geographic separation is not determinative, but it is significant here because other factors support the single-facility unit. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

Bargaining history is a factor to be considered in light of the other factors in the single-facility presumption analysis. *See e.g., Coplay Cement Co.*, 288 NLRB 66 (1988). Here, the record reflects only that a union (other than the Petitioner) was certified in the 1970s, the unit did not include pie plant employees, some bargaining occurred, and no contract was reached. Moreover, neither party raised collective bargaining history as an issue. Considered in light of the rest of the analysis, then, the lack of evidence regarding bargaining history leads me to conclude that the single-facility presumption has not been rebutted.

In its brief, the Employer cited no case law in support of its position for a multi-facility unit.

## **B. Appropriateness of Petitioned-For Unit**

In the instant case, the Employer argues that maintenance, production, sanitation, and garage employees should be included with shipping and transport employees in any unit found appropriate.

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001). For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. The Board first announced the community of interest concept in *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962). "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB No. 24 (2001) (citations omitted).

I find that the petitioned-for unit shares a sufficient community of interest and that it is an appropriate unit.

The record reflects that shipping and transport employees share a sufficient community of interest. Shipping and transport employees share relatively the same wage range (\$11.05-\$14.25 per hour for shipping and \$13.85-\$14.75 per hour for transport) and work approximately forty hours per week (either on four or five-day work weeks). They work out of the same area of the bread plant and ultimately report to the same department head. Out of the eleven transfers over the past two years, two were from shipping to transport and one was from transport to shipping. Working in the same area, the shipping and transport employees have frequent and substantial

contact with each other. In fact, they are both responsible for loading and unloading product. It is in this regard that the two positions are functionally integrated, as transport employees cannot make their runs without the product first being loaded onto their trucks.

Although the Employer argues in favor of a wall-to-wall unit, the evidence weighs against such a finding. Generally, maintenance, production, sanitation, and the garage employee perform skills and serve functions wholly distinct from shipping and transport. Maintenance, production, and sanitation have separate supervision from shipping and transport. Maintenance, production, sanitation and the garage employee work in different areas and attend different departmental meetings than shipping and transport. As such, any contact that these employees have with shipping and transport employees is incidental in nature. Lastly, the evidence of interchange and functional integration between the disputed classifications and the petitioned-for unit is minimal and not sufficient to warrant a wall-to-wall unit.

It is well established that “[a] petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and in representation proceedings, the unit sought by the petitioner is always a relevant consideration.” *The Lundy Packing Co., Inc.*, 314 NLRB 1042, 1043 (1994). Based on the above factors, the petitioned-for unit is an appropriate unit. In its brief, the Employer cited no case law in support of its position for a wall-to-wall unit.

## **VII. Summary**

In view of the pertinent Board law and the evidence reflected in the record, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit and that the Employer has failed to rebut the single-facility presumption. As described above, my decision is based on the fact that employees at the bread and pie plants have

distinct functions and geographic locations, minimal contact, no interchange, and no evidence of a historical bargaining relationship.

The shipping and transport employees in the petitioned-for unit share similar wages, hours, working conditions, supervision, functions, have frequent contact, transfer between their departments, and are functionally integrated. In sum, the Employer has not established that pie plant, maintenance, production, sanitation, and garage employees must be included in the unit, and accordingly, I find that they should be excluded from the unit.

### **VIII. Conclusions and Findings**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is a Delaware corporation with an office and place of business in Abilene, Texas, where it is engaged in the production of bread and cake products. During the past twelve months, a representative period, the Employer sold and shipped from its Abilene, Texas facility goods valued in excess of \$50,000 directly to points outside the state of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's status as a labor organization.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All warehouse and transport drivers at the Employer's 2701 Palm Street, Abilene, Texas facility.

**EXCLUDED:** All salespeople, office clerical, managers, watchmen, guards, and supervisors as defined in the Act.

## **IX. Direction of Election**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the General Drivers, Warehousemen, and Helpers Local Union 745.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their

replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102, on or before March 17, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will

the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.



## **X. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on March 24, 2005. The request may not be filed by facsimile.

**Dated** March 10, 2005, at Fort Worth, Texas.

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director  
NLRB Region 16